

UNITED STATES OF AMERICA,  
                     Plaintiff,  
 vs.  
 ANGELO PETER EFTHIMIATOS,  
                     Defendant.

SENTENCING HEARING TRANSCRIPT

KELLI M. MULCAHY, CSR, RMR, CRR  
United States Courthouse  
123 East Walnut Street  
Des Moines, Iowa 50309

1                   P R O C E E D I N G S

2                   (In open court.)

3                   THE COURT: Thank you. You can be seated.

4                   We are here today in the matter of Criminal Case No.  
5 3:13-cr-00015, United States vs. Angelo Efthimiatos. The United  
6 States Probation Office is represented by Katie Tady. The  
7 United States Attorney's Office is represented by Assistant  
8 United States Attorney Clifford Cronk, and joining him is Case  
9 Agent David Hoagland. The defendant is personally present and  
10 represented by his attorney, John Lane.

11                  Mr. Efthimiatos, do you recall being in court on  
12 December 20th and pleading guilty to a two-count superseding  
13 indictment filed against you in August?

14                  DEFENDANT EFTHIMIATOS: Yes, ma'am. Yes, I do.

15                  THE COURT: Specifically, you pled guilty to  
16 conspiring to distribute, manufacture, and possess with intent  
17 to distribute 50 kilograms or more of marijuana and possession  
18 with intent to distribute marijuana; is that right?

19                  DEFENDANT EFTHIMIATOS: Yes, Your Honor.

20                  THE COURT: And those offenses are each punishable by  
21 up to 20 years in prison, a fine of up to \$1 million, a term of  
22 supervised release of at least three years and up to life on  
23 supervised release, and a \$100 special assessment. Do you  
24 remember those penalties?

25                  DEFENDANT EFTHIMIATOS: Yes, Your Honor.

1           THE COURT: And you understand you're here today to be  
2 sentenced?

3           DEFENDANT EFTHIMIATOS: Yes, ma'am.

4           THE COURT: I have received and read the Presentence  
5 Investigation Report in this case. The most recent report is  
6 dated June 10th and it's filed at Docket No. 196.

7           I've also received and read the sentencing memorandum  
8 filed by Mr. Lane on your behalf, Mr. Efthimiatos. That memo  
9 was filed at Docket 198. And I have also read all the letters  
10 of support from your friends and your family members that were  
11 sent to me either directly or forwarded to me by Mr. Lane.

12           And, Mr. Lane, I appreciate you getting those to me  
13 ahead of the time for the sentencing.

14           I read Mr. Cronk's sentencing memo filed at Docket 202  
15 as well.

16           And, Mr. Lane, I received your memorandum related to  
17 the restitution issue as well, and I found that helpful. Thank  
18 you.

19           Mr. Cronk, did you have a chance to review the  
20 Presentence Investigation Report on behalf of the Government?

21           MR. CRONK: Yes, Your Honor.

22           THE COURT: And can you summarize for me the issues  
23 that I would need to resolve today from the Government's  
24 standpoint?

25           MR. CRONK: I'll try. First, I think the Court has to

1 settle upon and make findings concerning the drug quantity that  
2 should be attributable to Mr. Efthimiatos. The Court has to  
3 decide whether or not his objection for not having been given a  
4 minimal role or minor role in the offense should be granted or  
5 denied.

6           There's no objection to the special skill. There's no  
7 objection about the two-level reduction for acceptance of  
8 responsibility.

9           The only other issue, I think, is whether or not  
10 restitution should be ordered to Mr. Cooper and, if it is  
11 ordered, to what extent should it be, what the amount should be.

12           THE COURT: Thank you, Mr. Cronk.

13           Mr. Lane, did you have a chance to review the  
14 presentence report with Mr. Efthimiatos?

15           MR. LANE: Yes, Your Honor.

16           THE COURT: And could you make a brief record of how  
17 you did that?

18           MR. LANE: Yes, Your Honor. Well, upon receipt of the  
19 first draft of the presentence report, Your Honor, I sent it to  
20 my client. I think he was at the Muscatine County Jail by then.  
21 I then later visited him and we went through the report  
22 paragraph by paragraph. We then filed several pages of written  
23 objections, Your Honor.

24           THE COURT: And the issues that Mr. Cronk has  
25 outlined, do you agree that those appear to be the active issues

1 to be resolved today?

2 MR. LANE: Yes, Your Honor. As I showed on page 2 of  
3 my sentencing memorandum, I think that Mr. Cronk is right the  
4 issue is quantity, the issue is a minor participant. And then I  
5 had two additional issues; whether or not the Court could vary  
6 or wanted to vary downward two levels both because of the  
7 upcoming guideline change effective November 1, 2014, and also  
8 because of the reasons stated in United States vs.--I think  
9 that's pronounced Dayi. And then finally, Your Honor, as also  
10 mentioned by the Government, restitution, if any, owed to  
11 Mr. Cooper.

12 THE COURT: Thank you, Mr. Lane.

13 Mr. Cronk, what is the Government's position with  
14 respect to that two-level variance request regarding the  
15 upcoming amendment to the sentencing guidelines, the drug  
16 quantity table?

17 MR. CRONK: I'm directed to take the position that the  
18 Court should impose or should grant a two-level reduction with  
19 the understanding that the record would reflect that in the  
20 future if there is an actual change in the guidelines such that  
21 it's retroactively applied to individuals sentenced prior to the  
22 enactment of the change that the defendant would not be eligible  
23 in the future for some sort of a reduction under 3582(c). As  
24 long as the record reflects that, I think the Government's  
25 position is that it should be awarded.

1           THE COURT: And, Mr. Lane, is your client agreeable to  
2           waiving any right he may have for additional relief under  
3           3582(c), at least provided that that amendment is only effective  
4           as to those two levels?

5           MR. LANE: May I have just a moment, Your Honor?

6           THE COURT: Yes. Go ahead.

7           MR. LANE: We're agreeable to that, Your Honor.

8           THE COURT: Okay. Then I will grant that request for  
9           a downward variance, as I have in other cases, and we'll make  
10          sure we note in the J & C itself what that variance is and its  
11          ramifications for future relief.

12          Let's go ahead and start, then, with the contested  
13          issues, and we'll just sort of go through them in the order they  
14          appear in the guidelines. The first is drug quantity.

15          Here, Mr. Lane, as I understand it, you are seeking a  
16          lower base offense level.

17          Mr. Cronk, you're seeking a higher base offense level  
18          than was recommended in the presentence report. The Government  
19          bears the burden on this. I don't know that we have much by way  
20          of disputed facts so much as how we interpret those facts, but  
21          do you have any additional evidence or argument you'd like to  
22          present?

23          MR. CRONK: I don't have any additional evidence. I  
24          just want to remind the Court of a few things, which include the  
25          evidence that has been presented in this case, not just at the

1 suppression hearing and not just at the forfeiture hearing, but  
2 also at the trial of Michael Efthimiatos, as well as Mr. Angelo  
3 Efthimiatos' admissions when he pled guilty. I'll summarize  
4 those briefly and then just make an argument about what I  
5 believe those mean.

6           As the Court's aware, the simple part is the 25 or so  
7 kilos that Mr. Efthimiatos was caught with. I don't think  
8 anybody's arguing he shouldn't be held accountable for that. He  
9 actually pled guilty to 50 kilograms or more so there really  
10 can't be an argument that it should be less than 50 kilograms.

11           Mr. Efthimiatos admitted that he had been doing this  
12 in the past, he had done it ten years earlier with someone else  
13 not in California but in the area of the northeastern United  
14 States. He indicated that in the previous year prior to  
15 February of 2013 he had taken multiple trips to California using  
16 aircraft, using different aircraft on each occasion.

17           We know that we've been able to document through  
18 various sources that he and his brother both traveled to  
19 California in April of 2012, we believe June of 2012. We know  
20 he purchased the Sierra aircraft in September of 2012 and flew  
21 it to California in October of 2012. We know he rented the  
22 aircraft, the twin-engine belonging to Mr. Cooper, in February  
23 of 2013, and in each of those occasions we believe we can show  
24 that he rendezvoused with his brother in California.

25           And we, of course, have video of the duffel bags being

1 loaded--or not actually physically loaded all the way onto the  
2 plane, but the strong circumstantial evidence is that those bags  
3 were purchased in California, filled with marijuana, and then  
4 placed in the aircraft for Mr. Efthimiatos to take off in the  
5 early morning hours of February 19th.

6           When he was arrested--or not even arrested, stopped  
7 and questioned, he repeatedly claimed that this was a very huge  
8 operation. He used the word "huge" or "really big" several  
9 times. He also admitted that he could assist the Government  
10 because there was another load that he had arranged for in April  
11 of 2013 of a couple of hundred pounds of marijuana.

12           He said that he had been taken to and seen and had  
13 discussed with his contacts in California large warehouse  
14 operations of indoor grows of high-grade marijuana that had the  
15 ability to avoid detection from the air, again repeating that  
16 this is a huge operation and that the Government must have had  
17 somebody on the inside in order to catch him the way they did.

18           I think when you put all this stuff together, when you  
19 consider the testimony of Jay Bump, the understanding that the  
20 source area where he was traveling to get marijuana, his  
21 admissions that he could get 200 pounds at one time, that he'd  
22 already gotten 55 pounds in February, that he had made multiple  
23 trips before that, and his admissions about the scale and scope  
24 of the drug-trafficking operations in northern California, that  
25 the drug quantities would be as huge as Mr. Efthimiatos says



1 they are and, of course, we know they are.

2 We know from our world's experience, from our life's  
3 experience, from our criminal experience of dealing with people  
4 that much, much larger loads of marijuana are interdicted on the  
5 highway coming from California to New York or parts east, and  
6 Mr. Efthimiatos was well aware of that.

7 Under the circumstances, I think that a Level 38--or a  
8 Level 28 actually understates what was reasonably foreseeable to  
9 him. As Special Agent Bump testified, someone who can provide  
10 50 pounds can provide 100 pounds. If someone can provide 200  
11 pounds on one occasion, there's no reason to believe they can't  
12 provide 200 pounds on multiple occasions.

13 This isn't a one-time operation. This happened over a  
14 period of months, and Mr. Efthimiatos had a clear understanding  
15 and knowledge about the people he was dealing with and how much  
16 marijuana they could produce. Under the circumstances, we think  
17 that the base offense level should be in the area of 28 to 30,  
18 and it's based on-- I mean, it could be much, much higher than  
19 that, but just what's reasonable based on his own statements and  
20 admissions, we believe it should be in the area of 28 to 30 and  
21 not 26.

22 That's all I have.

23 THE COURT: Thank you, Mr. Cronk.

24 Mr. Lane, do you have any evidence or argument you  
25 would like to present on this issue?

1           MR. LANE: No evidence, Your Honor, but I would have  
2 some argument.

3           THE COURT: Go ahead.

4           MR. LANE: Well, Your Honor, first of all, this will  
5 make the Court's job easier. Plenty of information in the  
6 presentence report, there's three drafts, but in any event, that  
7 wasn't objected to by us. That sets a factual background. So,  
8 for example, the Government included a lot of information  
9 regarding Mr. Michael Efthimiatos' jury trial, and we reviewed  
10 that, and so forth.

11           So I just heard argument from Mr. Cronk, but that's  
12 not evidence, and even the evidence in the presentence report,  
13 the unobjected to evidence, doesn't get it up to 400 kilograms,  
14 which I think is the Government's requested base offense level.

15           Just very interesting, Your Honor, there's just  
16 nothing to tag or cite, other than what few vague phrases that  
17 Mr. Angelo Efthimiatos might have said. Well, we think that the  
18 U.S. Probation Officer scored it too high, but they themselves  
19 rejected that higher 400 kilograms and up.

20           Interestingly enough, I've never seen this happen,  
21 initially, when the first draft of the presentence came out,  
22 that was on February 3 of 2014, U.S. Probation Officer didn't  
23 even score the future trips, the 200 pounds that Mr. Cronk just  
24 mentioned. Instead they went and tried to calculate how many  
25 trips had occurred in the past and then took the same quantity

1 that was seized from Mr. Angelo Efthimiatos.

2 That paragraph completely changed when the Government  
3 then filed its objection and said the four prior trips can't  
4 show more than whatever it was, 55 keys. In other words, they  
5 weren't saying that it was a much greater quantity. That time,  
6 at that time, then, U.S. Probation went back, and on, I call it,  
7 the first final, it was the presentence report in April, went  
8 back and went ahead and scored the 200-pound trip that was  
9 discussed by Mr. Efthimiatos to the agents.

10 So it's a little bit like trying to hit a moving  
11 target here, Your Honor, but clearly the U.S. Probation, the  
12 Government and Defendant all have different scenarios.

13 I'd like to attach some numbers to the argument, and  
14 it's this, Your Honor: If this Court says that's too  
15 speculative, that's not really foreseeable, who knew if that was  
16 ever going to happen-- That's like asking somebody if they've  
17 done a criminal act in the past if they don't get caught will  
18 they do it again. Not really an object of a conspiracy.

19 If the Court takes away those 200 pounds, Your Honor,  
20 and essentially rejects the Government's claim, what we really  
21 have here, Your Honor, is 25.31 kilograms for all the prior  
22 trips. And Ms. Tady had to actually go back in the presentence  
23 report and reduce it down. Then we have the instant offense,  
24 which is 25.31 kilograms, the same amount. That comes to 50  
25 kilograms, 50.62 kilograms, Your Honor.

1           And so we think, and that's why we put it in our  
2     sentencing memorandum, we think, Your Honor, that the Court can  
3     have confidence finding that the amount that Mr. Angelo  
4     Efthimiatos should be held responsible for is 50.62 kilograms,  
5     and, as I mentioned in the sentencing issues, that would produce  
6     a base level of 20 for at least 40 kilograms but less than 60  
7     kilograms of marijuana, Your Honor.

8           In other words, in brief, not a lot to hang your hat  
9     on in that it's 400 kilos or even more to justify a Level 28,  
10    and we're essentially arguing, Your Honor, that if the Court  
11    discounts the wild puffery statement by Mr. Efthimiatos that  
12    there's another trip coming up, really, we're left with the  
13    50.62 kilograms, Your Honor, and the base offense level of 20.

14           That's all I have under quantity, Your Honor.

15           THE COURT: Thank you, Mr. Lane.

16           In this particular case, I do find by a preponderance  
17    of the evidence that the amount of marijuana that the probation  
18    office has calculated at a base offense level of 26 is the  
19    appropriate base offense level.

20           And here's why I get to that place. Here I think we  
21    know very little of what the real story is of what was going on.  
22    We really have pretty limited information, most of which comes  
23    out of Mr. Efthimiatos' mouth when he's caught in February of  
24    2013.

25           And then the Government, I think, here did an amazing

1 job of trying to corroborate, to the extent they could, the  
2 little information that they gleaned. They got travel records,  
3 they got flight records. They put together phone records. All  
4 of the pieces they could put together, they put together.

5           And when you look at that information, what we do have  
6 solid evidence of or what I find to be reliable evidence upon  
7 which to base my decision is these essential factual points:  
8 The defendant made at least one trip with 55 pounds of marijuana  
9 that nobody disputes here on February 19th, and that's the one,  
10 of course, where the police encounter him; the defendant planned  
11 a future trip involving 200 pounds of marijuana.

12           And here this isn't speculative. I don't think that's  
13 puffery. He had purchased a plane for the purpose of making  
14 that trip, he had taken concrete steps towards making that  
15 flight. He gave a very specific amount of marijuana. This  
16 wasn't just, "I've got a big trip planned." He gave a number.  
17 It's a number that's realistic based on the expert testimony  
18 that I found credible that we heard during the trial, the  
19 suppression hearing and the forfeiture hearings in this  
20 particular line of cases.

21           Mr. Efthimiatos admitted making four prior trips in  
22 2012 before that February 19th of 2013 trip. On one of  
23 those--or on the 55-pound trip, he made \$18,000 he said. On the  
24 smallest of those four prior trips he said he was paid \$5,000.  
25 And he admitted to smuggling marijuana across the United States

1 border a decade ago, and that comes into play here only when I'm  
2 looking at trying to convert the amount of money Mr. Efthimiatos  
3 was paid into a real quantity to provide a reasonable estimate  
4 of what those trips, those four trips of unknown quantity,  
5 should be calculated as.

6           So if you look at the amount of money in the Canada  
7 trip, essentially Canada trips, he was making \$3,000 per 20  
8 pounds of marijuana transported is what he said. On the  
9 smallest of his more recent trips he said he was paid \$5,000,  
10 and we know the most he was paid was \$18,000.

11           So if you look at those numbers, basically,  
12 Mr. Efthimiatos was paid somewhere between \$150 and \$327 per  
13 pound of marijuana he transported. And if you crunch those  
14 numbers together, and, again, relying upon the expert  
15 information that we had provided here from our DEA folks, you  
16 get his smallest trip in 2012 to be no less than 33 pounds using  
17 those dollars-per-pound figures. We know the largest of those  
18 was 55.

19           If you tally all of that up, assuming even the  
20 smallest being 33 pounds and that all four of those prior trips  
21 were 33 pounds, plus the 55 pounds and the 200 pounds, you get  
22 to a base offense level of 26. If you assume every one of those  
23 prior trips was 55 pounds plus 200 pounds for the future trip,  
24 again, we get to the Base Offense Level 26.

25           So the only way we get more than the base offense

1 level of 26 is if we can find evidence that there was more going  
2 on or there were more trips. I believe there was. I think it's  
3 a common-sense matter here to believe that there's more going on  
4 than we know about because it doesn't make sense to swap out  
5 planes for 50 pounds of marijuana. It doesn't make sense to pay  
6 somebody \$18,000 to fly across the country with 50 pounds of  
7 marijuana.

8           However, as much as I suspect that based on my common  
9 sense and my training and experience, that's not evidence I can  
10 rely on at the time of sentencing. I can only rely on here what  
11 I can find based upon the evidence we do have. And so the  
12 evidence we do have, as I've laid out before and what I am  
13 relying on, is what gets us to the base offense level of 26,  
14 which is essentially the undisputed facts of this particular  
15 case that are known to us.

16           With respect to role in this case, Mr. Lane, that is  
17 your particular burden. Do you have any evidence or arguments  
18 you'd like to make on that topic?

19           MR. LANE: No evidence, Your Honor, just argument.

20           Well, Your Honor, we made that objection because the  
21 application note to that guideline talks about and gives an  
22 example of a pilot, and we wanted to preserve and reserve the  
23 argument that Mr. Angelo Efthimiatos was a pilot, and that is a  
24 recognized factor that the Sentencing Commission considered in  
25 its application note.

1 I did note in the Court's orders setting the  
2 sentencing in its footnote where counsel doesn't need to bother  
3 with legal arguments regarding a variety of guidelines, and  
4 that's because of the Court's prior experience as an Assistant  
5 U.S. Attorney for 15 or more years. I understand that, I  
6 appreciate it.

7 THE COURT: You can certainly make those arguments. I  
8 was just trying to save you time.

9 MR. LANE: No. I understand, Your Honor. And, again,  
10 it would just be telling you things you already know cold.

11 And so, Your Honor, we understand there's a weighing  
12 aspect in here, and we think, though, that the undisputed  
13 evidence here is that he's primarily a pilot and he doesn't have  
14 as much involvement in the offense as the Government would want  
15 you to believe, Your Honor. That was the basis for the request  
16 for a two-level downward departure for minor participant, his  
17 status as the pilot, Your Honor.

18 Thank you.

19 THE COURT: Thank you, Mr. Lane.

20 Mr. Cronk, argument you'd like to make?

21 MR. CRONK: I don't think there's any legal basis for  
22 the Court to conclude that Mr. Efthimiatos played a minor role  
23 in this case. I think there's some evidence that his brother  
24 was more involved and had a higher position in this  
25 organization.



1           And if they weren't brothers, if they were just two  
2 strangers and Mr. Efthimiatos was paid to fly an airplane to  
3 California and fly back, we might be having a different case  
4 here, but that's not really what we have.

5           Mr. Efthimiatos is clearly deeply involved in this  
6 conspiracy, and under the cases that I cite to the Court and the  
7 guideline applications, I don't believe he qualifies for any  
8 mitigating role.

9           THE COURT: Thank you, Mr. Cronk.

10           This is a case where the Court finds, by a  
11 preponderance of the evidence, that a mitigating role adjustment  
12 should not be applied. A two-level mitigating role adjustment  
13 applies under 3B1.2 where a defendant is a minor participant,  
14 and that generally means, under the definitions of the  
15 guidelines, that the defendant is, quote, less culpable than  
16 most other participants in the crime.

17           Here, where I have the same limited information I had  
18 on making the drug quantity assessment, I have the same limited  
19 information in trying to decide what the roles of the various  
20 people involved in this case were. At this point, the only two  
21 participants that I have reliable information upon which I can  
22 base decisions are Michael and Angelo. These two individuals,  
23 it's hard to know who's more culpable, but certainly neither one  
24 of you appears to be substantially less culpable than the other  
25 person.

1           What we know is that Angelo, as the pilot, is clearly  
2 the person who has been responsible for flying loads of  
3 marijuana back and forth across the United States. What we know  
4 about Michael is that he helped carry marijuana to the plane on  
5 that February 2013 trip. We know that he helped provide cash  
6 cards or gift cards from Target footage. We know that.

7           What that may mean is that Michael's higher in the  
8 drug conspiracy and he's, in fact, the money man or the point of  
9 contact for these California suppliers. There's some evidence  
10 of that from Michael's trial, that he's cashing in large amounts  
11 of money, that he is uniquely in contact with these folks when  
12 he's in California. But it might also be that he's Angelo's  
13 sidekick. We just don't know.

14           And because I don't know and because this is the  
15 defendant's burden, I find that the defendant has failed to  
16 prove by a preponderance of the evidence that he should receive  
17 a mitigating role adjustment.

18           So based upon those findings, let's go ahead and  
19 compute an advisory guideline range, and then we can talk about  
20 departures and variances.

21           Starting under United States Code Section--I'm  
22 sorry--United States Sentencing Guideline Section 2D1.1, we have  
23 the Base Offense Level 26, which I'll adjust for the variance  
24 here in a moment based on the upcoming amendment to the drug  
25 quantity table.

1           We have an undisputed two-level upward adjustment for  
2 abuse of a position of trust or use of a special skill. There  
3 is a two-level decrease for acceptance of responsibility.

4           Mr. Cronk, it's my understanding you are not moving  
5 for that third level; is that correct?

6           MR. CRONK: That is correct.

7           THE COURT: That leaves us, then, with a base offense  
8 level of 28, which is, essentially--I'm sorry--26, which is 26  
9 plus two less two. Mr. Efthimiatos is a criminal history  
10 category of I, which would give us an advisory guideline range  
11 to start with of 70 to 87 months' imprisonment.

12           With the two-level variance based on the changes to  
13 the drug guideline table that will be implemented on November  
14 1st, we have a new range of 51 to 63 months' imprisonment as an  
15 advisory guideline range.

16           Probation is an option, although it is not recommended  
17 in this particular case. Supervised release of three years to  
18 life is applicable.

19           At a total offense level of 26, the recommended fine  
20 range would be \$12,500 to \$125,000 as an advisory guideline  
21 range, up to one million, of course, is what potentially the  
22 fine could be here. I don't believe that Mr. Efthimiatos has  
23 the ability to pay a fine, and so ultimately I don't intend to  
24 impose one. Forfeiture has been discussed in great detail  
25 outside of the confines of this particular hearing. And there

1 is a special assessment of \$100 per count.

2 That is essentially where we get to when we start  
3 talking about an appropriate sentence. That's our advisory  
4 guideline range.

5 Mr. Cronk, what is your recommendation with respect to  
6 an appropriate sentence in this case? And if you could touch  
7 upon the Government's position with respect to restitution as  
8 requested by Jack Cooper, either now or towards the end of your  
9 argument, I'd appreciate that as well.

10 MR. CRONK: Before I do that, Your Honor, I direct the  
11 Court's attention to paragraph--or Part B of the presentence  
12 report which assesses the criminal history, and either I missed  
13 something or the Court misspoke, but my understanding is the  
14 defendant is not a Criminal History Category I, he's a Criminal  
15 History Category II.

16 And I look at paragraphs 102 and 103 of the  
17 presentence report, and it describes him as having a criminal  
18 history category of II at a Level 26, but we're really at a  
19 Criminal History Category II at a Level 24 based on the  
20 adjustment the Court did for drug quantity, and that means that  
21 the guideline range, instead of 51 to 63 months, should be 57 to  
22 71 months. And I want to make sure the record's clear on that,  
23 and if I made a mistake, I'm sorry.

24 THE COURT: You did not. That was my mistake, and I  
25 was reading off of a note that was not as clear, and, in fact,

1 my clerk handed me the same note as you were standing up.

2 So that is correct, he should be a criminal history  
3 category of II, which gives us advisory guideline range before  
4 the variance, 26-II would be, as you said, 70 to 87 and 24-II  
5 would be 57 to 71 months' imprisonment.

6 Thank you for that clarification, and go ahead with  
7 your argument.

8 MR. CRONK: Thank you, Your Honor.

9 This is difficult for me to give the Court what I  
10 consider to be the right answer. The way this thing has gone  
11 and how long it's lasted, the fact that we actually indicted him  
12 for a higher drug quantity and superseded with a lower amount  
13 which benefited him substantially, the frustration that I have  
14 over not knowing, as the Court doesn't know, who were his  
15 customers and who were his suppliers and what was the  
16 otherwise--what was the method that they were using for  
17 distributing this high-grade marijuana.

18 I've had dozens of interdiction cases with people  
19 seized with a much larger amount of marijuana that had  
20 absolutely no idea who got the marijuana and who it was going  
21 to. They were driving loads in cars and they were paid. I was  
22 in El Paso for two years, and we had dozens of cases of people  
23 that just claimed they were paid \$100 to drive a car across the  
24 bridge into the country.

25 We're dealing with someone with a whole lot more

1 information than that. This is not a mule or a transporter who  
2 got caught simply with 25 kilos of marijuana. This is an  
3 individual who was deeply involved in this conspiracy.

4 Don't know how he made the decision to do it. I don't  
5 know why, with a wife and a child back in Connecticut, that this  
6 seemed like a good idea. I don't know why, after doing it one  
7 time in April of 2012 that he decided again to do it three  
8 months later and again three or four months after that and again  
9 three or four months after that.

10 This is not a poor-- This is not a sort of mistake in  
11 judgment on a particular day where he made a bad choice. This  
12 was a deeply considered and concerted effort to start to bring  
13 large amounts of high-grade marijuana to the people in northeast  
14 United States. I don't know who it was getting to, but I can  
15 guarantee you that it was not going all to adults.

16 And this idea that marijuana is not a big deal and  
17 that it's being decriminalized in other places, I beg to differ.  
18 It's a very big deal. This activity is dangerous, it's high  
19 risk, and in this case it was long-standing and lasted over a  
20 period of at least a year if you don't count what he admitted he  
21 did years earlier.

22 The fact that he was flying small single-engine planes  
23 over the Rocky Mountains for the sake of getting a few pounds of  
24 marijuana, risking his own life and leaving his wife and child  
25 behind, shows the dedication that he had to this illegal

1 endeavor.

2           The idea and the thought and then the reaching the  
3 actual concrete decision to purchase aircraft for the purpose of  
4 transporting drugs, upgrading to the next size so that he could  
5 have even a more comfortable ride with more marijuana shows the  
6 Court that this is not somebody who should be treated as if he  
7 had no knowledge of the operation and just got caught one time  
8 with marijuana.

9           With the guideline range of 57 to 71 months,  
10 considering Your Honor's heard how many times he's been  
11 arrested, how many times he's been convicted, the kinds of  
12 things that he's done in the past, the fact that he hasn't  
13 learned that crime doesn't pay suggests a sentence below the  
14 bottom of the guideline range? I'm asking the Court to sentence  
15 him to 70 months in prison.

16           THE COURT: Thank you, Mr. Cronk.

17           Mr. Lane.

18           I'm sorry. I apologize, Mr. Lane.

19           Can you talk to me about restitution, Mr. Cronk?

20           MR. CRONK: Your Honor, I think it's discretionary. I  
21 don't know. I don't know. Your Honor heard the testimony of  
22 Mr. Cooper when he was here. He testified to the damage to his  
23 plane. I understand his restitution claim includes flying out  
24 to retrieve his aircraft and the storage fees and things like  
25 that.

1 I would ask the Court to order restitution at least  
2 for the damage done to the plane, and I think that's  
3 quantifiable. I would ask the Court to impose that.

4 THE COURT: Thank you, Mr. Cronk.  
5 Mr. Lane.

6 MR. LANE: Well, Your Honor, someone can call a series  
7 of events big time, big threat, big danger, and if they say it  
8 enough times, I guess that speaker expects it to be believed.  
9 I'm sorry. Maybe it's 33 years of practicing law. This isn't a  
10 big marijuana conspiracy.

11 And I'm glad Mr. Cronk shared his El Paso experience  
12 because it's nothing compared to what they're typically  
13 prosecuting in the Northern District of Iowa. So it's 100  
14 kilos, as determined by the Court.

15 And I slightly take offense at Mr. Cronk's statement  
16 that not all is going to adults, the implication it's going to  
17 children. If he's saying kids in high school are going to  
18 experiment with marijuana, he's probably right. He just got  
19 done saying, though, that he doesn't know the facts of this  
20 case. So if there's some kind of suggestion or wants to leave  
21 it on the tip of the Court's mind that somehow this was  
22 intended, destined for less than adults, not supported in the  
23 least, just pure puffery.

24 Your Honor, I think that the appropriate sentence is  
25 credit for time served. As of today, Mr. Efthimiatos has served



1 16 months in either the Scott County Jail or the Muscatine  
2 County Jail, and, given all of the facts of the case, Your  
3 Honor, that's a pretty good sizeable penalty, and I know the  
4 Court hasn't discussed the other variance request I've made, or  
5 a period of probation with credit for the time served that he's  
6 already spent, and perhaps he'll be closely monitored out in  
7 Connecticut.

8 But I don't think his conduct in this-- And that's  
9 not to excuse his conduct. I just don't think his conduct in  
10 this case, at least based on my experience, and certainly based  
11 on the Court's experience, warrants a 70-month sentence.

12 Regarding the restitution, I just don't think it's  
13 authorized by the Code. I understand it's discretionary. We're  
14 at a loss to understand what the damage is. He rented the  
15 airplane. Something's wrong with it. That's Mr. Cooper's  
16 responsibility. No one's-- There's nothing in the file that  
17 says somehow my client intentionally damaged it. If it burned a  
18 valve or needed this or needed that, that's the cost of doing  
19 business if you're going to start leasing airplanes.

20 In my opinion, and as I put in my memorandum of  
21 authorities, Your Honor, I don't think the restitution is  
22 supportable by the statute. It's an arm's-length transaction  
23 between two people. There's no doubt about it that my client  
24 owes Mr. Cooper money. That it should somehow take on the  
25 clothing of a restitution order in a criminal case we just

1 completely disagree with, Your Honor.

2 He seemed like a fine gentleman, but at the same time  
3 him being a fine gentleman doesn't make him entitled to some  
4 \$17,000 of restitution, Your Honor. We think the Court should  
5 order zero.

6 The Court's already mentioned that given  
7 Mr. Efthimiatos' financial position it's not going to order a  
8 fine. As I mentioned in my sentencing memorandum, Your Honor,  
9 that's another factor the Court must consider in any case when  
10 ordering restitution, what the impact or financial impact is on  
11 the defendant and the defendant's family. Another reason to  
12 decline or deny the request for restitution, Your Honor.

13 Thank you.

14 THE COURT: Thank you, Mr. Lane.

15 Mr. Efthimiatos, this is the time in the sentencing  
16 hearing when you are allowed to say what you might want to say  
17 to me or to the family that's here to support you. You don't  
18 have to say anything, and certainly a number of people in your  
19 family and friends have written very nice and important letters  
20 of support for you, but I'm happy to hear whatever you might  
21 wish to say.

22 DEFENDANT EFTHIMIATOS: It's obviously been a very  
23 difficult time. You know, I want to apologize to my family.  
24 This definitely wasn't a career choice. I've done a lot of good  
25 things in my life, a lot of real good things, and this does not

1 define how I am.

2 We put ourselves in a very bad financial situation. I  
3 made some very bad choices. I would have done it on horseback  
4 for my daughter. Obviously, I wouldn't do it again. I've  
5 missed-- I miss seeing her and being in her life.

6 I definitely-- Oh, God. I definitely deserve to have  
7 been incarcerated. I shouldn't be punished for what I have not  
8 done, what I had no intention of doing, what I had no ability to  
9 do. I had no authority to make that decision.

10 I said what I said in order to get home. I was  
11 willing to cooperate at the airport, I was willing to fly the  
12 load of marijuana I had to Connecticut so they could pick up the  
13 guy that was going to pick it up. I wasn't truthful about the  
14 200 pounds. I just wanted to get home.

15 You know, I just hate to see my daughter grow up  
16 without me for something that I didn't do. That's it. I'm  
17 sorry.

18 THE COURT: Thank you, Mr.--

19 MR. LANE: Your Honor, may I supplement my statement?

20 THE COURT: Yes.

21 MR. LANE: One of the things you held for later was  
22 the variance, and I do see the Dayi issue as separate. I'm not  
23 going to say anything more than-- I attached a copy of the  
24 opinion. I would just incorporate those statements.

25 I understand that was only a district court decision

1 out of Maryland, it's not an Eighth Circuit or appellate level,  
2 but we do think that there are some good statements in there by  
3 the judge that would warrant consideration for a less sentence,  
4 maybe not as structured as two levels but even greater than--a  
5 greater reduction than two levels, Your Honor.

6 Thank you.

7 THE COURT: Thank you, Mr. Lane.

8 Mr. Efthimiatos, I am sure Mr. Lane has explained to  
9 you that judges like me who sit in the Midwest are governed by  
10 the Eighth Circuit Court of Appeals, and that Court of Appeals  
11 has told us that in imposing a sentence I have to take three  
12 steps.

13 Step one is to look at the statutory penalties, which  
14 is why at the beginning of your hearing we talked about those  
15 sort of up to 20 years and up to a million dollars kinds of  
16 penalties.

17 And the second step is to consider what the guidelines  
18 recommend, and that's why we spend all the time we do talking  
19 about drug quantity and role and criminal history and things  
20 like that.

21 The third step is what's called a 3553(a) analysis,  
22 and that is something or a term, really, that means nothing to  
23 people who don't practice federal criminal law, but it is  
24 essentially a list of things that the judge is supposed to  
25 consider about the crime itself and the person who committed

1 it, essentially, the nature and characteristics of those  
2 things.

3 And in your case, I have taken all three of those  
4 steps. Your case has always been fairly mysterious to me. What  
5 we do know is that you were transporting loads of marijuana from  
6 the East Coast--or from the West Coast to the East Coast and you  
7 got caught with about 55 pounds of that marijuana. That's what  
8 we know for sure.

9 What we don't know is really almost anything else. We  
10 don't really know what Michael was doing with you. We don't  
11 really know who the two of you were working for or with. We  
12 don't really know where the marijuana was going. We just don't  
13 know all of those things.

14 And that has both costs and benefits for you. The  
15 benefit is you may well have been hugely involved and you're not  
16 getting credited for all of that because we don't know. It may  
17 also be that you're not getting credited for the more minor role  
18 you did play because we don't know.

19 But, as I said earlier, what I have to do is make my  
20 decision based only on what we do know, and I have limited  
21 information about you. So what I do know about you is, as we've  
22 talked about, the facts of your case, but also your history.

23 I certainly met a number of your family members during  
24 your brother's trial. You are a 44-year-old man. You were born  
25 and raised in Connecticut.

1           You've been married three times. You had two children  
2 with your first wife, and I think those children are now  
3 teenagers who live in England, and you have virtually no contact  
4 with them. You don't provide any financial support for them  
5 that I can see. You had a child with your second wife, I think  
6 she's now 11, lives in North Carolina. Again, you have  
7 virtually no contact with that child.

8           You've had two children with your current wife, and  
9 you lost one of those children, and I am very sorry for that.  
10 That's a horrible thing for any parent to suffer. Your daughter  
11 fought and stayed with you and is doing pretty well. She's got  
12 some developmental delays, but I read all of her records, she  
13 sounds like a really sweet, delightful little girl. And it  
14 seems like she's getting absolutely the health and treatment  
15 that she needs to become a healthy adult.

16           You have, by all accounts, a loving relationship with  
17 your wife. She's very supportive of you. You appear to be very  
18 supportive of her.

19           And you have no real serious physical problems, you  
20 have no real serious mental health problems, you have no real  
21 serious substance abuse problems.

22           You have been largely self-employed your entire adult  
23 life, and I actually think that may be one of the problems.  
24 Some of your self-employment ideas have worked, some of them  
25 have not. Some of them could charitably be called

1 get-rich-quick schemes, some of them could less charitably be  
2 called scams.

3           It's clear in looking at your employment history and  
4 in looking at the number of people who you've borrowed money  
5 from or loaned money to that you don't make good business  
6 decisions, and apparently neither do the people around you. So  
7 one of the things we're going to talk about a little bit later  
8 is a condition of supervised release about how you look at  
9 employment going forward.

10           Your criminal history, although you are a Category II,  
11 is really pretty minor. You've got this burglary that happened  
12 to somebody who owed you money, you've got a failure to appear,  
13 and you've got a criminal contempt relating to your second wife.

14           Looking at all of those things, in part,  
15 unfortunately, for you, there just isn't anything I can find  
16 there to vary because I just don't know enough to vary.  
17 Generally speaking, I think the drug guidelines are fairly high  
18 in our country and I frequently do vary in drug cases, but I do  
19 that in cases where I feel some comfort with what has happened,  
20 where we've got defendants who've come in and are completely  
21 honest, who debrief, who cooperate, who accept responsibility  
22 fully, who I feel like, coming into court and sitting on the  
23 bench, I know what happened. I don't have that in your case. I  
24 don't have even the remotest confidence that I really know what  
25 happened.

1           And I'm not going to punish you, I wouldn't punish you  
2 for not cooperating. That's your choice and that's your right.  
3 But I also can't reward you in the way I would reward somebody  
4 who did cooperate because I just don't know enough to use that  
5 information wisely.

6           And so ultimately in this case I am going to impose a  
7 sentence at the bottom of your guideline range, which is 57  
8 months. And you will receive credit for the time that you've  
9 already served. I impose that on each of Counts 1 and 2 to be  
10 run concurrently or at the same time.

11           I will recommend to the Bureau of Prisons that they  
12 place you as close as possible to your family. Do you want that  
13 family to be your daughter and wife or--

14           DEFENDANT EFTHIMIATOS: Yes.

15           THE COURT: --do you have some other requests?

16           DEFENDANT EFTHIMIATOS: My daughter and wife.

17           THE COURT: Okay. And they are still living in  
18 Connecticut?

19           DEFENDANT EFTHIMIATOS: The closest place would be  
20 Otisville, New York or Canaan, Pennsylvania.

21           THE COURT: And, Mr. Lane, do you know what level  
22 those facilities are?

23           MR. LANE: Never heard of them, Your Honor. I'm  
24 sorry, I don't.

25           THE COURT: Okay. Then we will list it as-- And can



1 you tell me what city your wife lives in?

2 DEFENDANT EFTHIMIATOS: North Salem, New York.

3 THE COURT: Then we'll list it as the closest facility  
4 to North Salem, New York, that's consistent with your security  
5 designation. You'll probably be eligible for a camp--

6 DEFENDANT EFTHIMIATOS: Right.

7 THE COURT: --almost immediately and so we wouldn't  
8 want to stick you closest to North Salem if it meant a  
9 penitentiary, so they'll look at your security needs as well.

10 Any other program requests, Mr. Lane, or--

11 MR. LANE: Doesn't have a considerable drug history,  
12 Your Honor, so--

13 THE COURT: I agree.

14 MR. LANE: --I'm not sure he would. Even if the Court  
15 recommended, I'm not sure the BOP would structure it that way.

16 THE COURT: Right.

17 Mr. Efthimiatos, when you arrive after your prison  
18 sentence, you will serve a three-year term of supervised  
19 release. That will have all the standard conditions of release;  
20 you can't commit new crimes, you can't use drugs, you can't have  
21 guns, things like that.

22 You'll also have a few special conditions of release  
23 that we'll talk about here. In deciding what kinds of special  
24 conditions of release to impose, I have made an individualized  
25 and particularized assessment based on your history and based on

1 the factors in your case with a goal towards making sure you get  
2 whatever treatment and assistance we can provide to help you  
3 really get back into society so you don't ever have to see me  
4 again and I don't have to see you again and you get a fresh  
5 start and you move on with your life.

6           So of those conditions, the first is what's called a  
7 search condition. And this is standard in almost all drug  
8 cases, and I impose it here as well. What that means is that  
9 the probation office has the ability to come into your house and  
10 search you or your house, your car or your businesses, only if  
11 they have a good reason to believe you're breaking the law or  
12 you're not violating--I'm sorry--you're violating a term and  
13 condition of supervision. They have to do that in a reasonable  
14 way and at a reasonable time if they choose to do that, and they  
15 can bring the marshals with them for your sake or for theirs.

16           I also am going to, for the reasons we talked about,  
17 as you come out of prison and you get employed, I am going to  
18 prohibit self-employment, meaning I would like you to work for  
19 somebody else. Now, that's a condition we can revisit if you  
20 have things that are going well, but I want you to learn to work  
21 with an organized group of people who are not in it to get rich  
22 quickly, who are not unstable.

23           You've had so many failed businesses and you've had so  
24 many problems with those failed businesses, and I would guess  
25 this crime is motivated in part by some of those failures, that

1 I want you to have some stability from employment.

2 Now, that doesn't mean that you can't work with your  
3 family. I know they've got a number of successful businesses.  
4 And the probation office will talk to you about those things.  
5 But what I don't want is sort of a new start-up company that  
6 you've got going where you get in with yourself and a couple of  
7 friends or whatever and you start a new business. Not during  
8 supervision. So I'm going to prohibit, as a term,  
9 self-employment in that way.

10 I do find that some restitution to Mr. Cooper is  
11 appropriate here. I don't find the full amount that he's asked  
12 for is appropriate here. In this case, this is essentially a  
13 discretionary restitution case. I do find that the damage to  
14 the plane that Mr. Cooper described during the course of some of  
15 our hearings in this case that was created by, essentially, the  
16 landing and some of the other things is a proximate harm that  
17 was suffered as a result of the criminal activity.

18 However, I don't find that the entirety of the  
19 expenses related to repairs is necessary here because in looking  
20 at the invoices it looks like at least some of those repairs  
21 were essentially the kinds of maintenance issues, as Mr. Lane  
22 has raised, that are engendered by leasing planes as opposed to  
23 you landing suddenly in the middle of Washington, Iowa's airport  
24 or flying routes that were not expected by Mr. Cooper when he  
25 rented you that plane.

1           I do not provide as part of restitution the rental  
2 costs themselves. That was a contractual relationship between  
3 the two of you that you would have had to pay no matter what you  
4 did with the plane. I don't find that the fuel and oil change  
5 charges Mr. Cooper has requested are essentially a proximate  
6 cause of harm or proximately caused by your criminal offense.

7           I have looked at the pilots retrieving the plane and  
8 those costs. I have some question about whether or not two  
9 pilots were necessary. Mr. Lane, I know, raised that issue. I  
10 looked at their travel receipts, and they're traveling by  
11 limousine when they get on the ground, which doesn't seem to be  
12 a reasonable thing to do particularly, you know, where you've  
13 got taxis or you can rent a car for much less. So ultimately,  
14 without more information, I'm not going to allow those  
15 particular charges as restitution.

16           The plane storage I'm not going to account because in  
17 part I don't know whether Mr. Cooper would have to pay storage  
18 costs anywhere, wherever he had his planes, and so I don't know  
19 whether \$50 a day for storing that plane in Washington, Iowa is  
20 really the same that he would have paid somewhere else. Maybe  
21 it's not, maybe it is, but without more information, I'm not  
22 going to apply that one.

23           With respect to the legal services to obtain the plane  
24 back, I just don't know enough here. That's not an unreasonable  
25 amount of money, but there is little case law out here on this

1 particular topic, and so, using my discretion, I just opted not  
2 to provide that money as well.

3           So the total amount I am going to apply is \$5,000 of  
4 restitution to Mr. Cooper. That is less than the \$7,118.17 that  
5 he's asked for in damages, but, again, I think some of those  
6 damages are related to standard maintenance, and so this is the  
7 amount that I think reasonably approximates the damage that was  
8 caused by the landing, unscheduled landing, in Washington, Iowa  
9 and Mr. Efthimiatos' unexpected flight in the manner in which he  
10 did with the marijuana.

11           I will make that amount joint and several with any  
12 restitution in the case that's involving Michael Efthimiatos.

13           I do find that no fine is appropriate in this case. I  
14 don't find that Mr. Efthimiatos has the ability to pay a fine  
15 and so no fine will be imposed.

16           Forfeiture has been resolved and will continue to be  
17 resolved in outside hearings, so I will simply reference those  
18 orders of forfeiture that have already been entered, and we have  
19 an upcoming hearing, as the parties know, in July to finalize  
20 those particular issues.

21           There is a \$100 special assessment on each count that  
22 must be imposed for a total of \$200.

23           The last thing I want to talk to you about,  
24 Mr. Efthimiatos, is your right to appeal. You have 14 days from  
25 today to file an appeal of the sentence I just gave to you. If

1 you don't file an appeal in the next 14 days, you forever give  
2 up your right to challenge this particular sentence.

3 If you want to appeal, all you need to do is let  
4 Mr. Lane know. He'll take care of filing that paperwork for  
5 you. To the extent Mr. Lane doesn't want to handle the appeal  
6 or financial arrangements have not been made, then if you  
7 qualify for appointed counsel, we'll appoint somebody to help  
8 you with that particular appeal.

9 What is really important is that Mr. Lane know what  
10 you want to do. A lot of defendants sitting where you're  
11 sitting are feeling all kinds of things. There's probably  
12 sadness, there's probably relief that it's over, there's  
13 probably all kinds of feelings. And many defendants are certain  
14 they told their lawyer one thing or another and the lawyer is  
15 equally certain they heard something different, and years down  
16 the road we're having a fight in the courtroom about what was  
17 really said, and it's not good for anybody.

18 So the safest thing for you to do is just write it  
19 down, "I do," or, "I do not want to appeal." You sign it, you  
20 date it, it protects both of you. You give it to Mr. Lane. But  
21 if you don't have to time to write it or you don't want to, all  
22 you have to do is let him know in the next 14 days, and he'll  
23 take care of that for you, okay?

24 DEFENDANT EFTHIMIATOS: Okay.

25 THE COURT: Mr. Cronk, we don't have counts to

1 dismiss. Is there anything else we need to do today?

2 MR. CRONK: No, Your Honor.

3 THE COURT: Mr. Lane?

4 MR. LANE: No, Your Honor. Thank you.

5 THE COURT: We are adjourned. Thank you.

6 (Proceedings concluded at 1:54 p.m.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                                   C E R T I F I C A T E

2                   I, Kelli M. Mulcahy, a Certified Shorthand Reporter of  
3 the State of Iowa and Federal Official Realtime Court Reporter  
4 in and for the United States District Court for the Southern  
5 District of Iowa, do hereby certify, pursuant to Title 28,  
6 United States Code, Section 753, that the foregoing is a true  
7 and correct transcript of the stenographically reported  
8 proceedings held in the above-entitled matter and that the  
9 transcript page format is in conformance with the regulations of  
10 the Judicial Conference of the United States.

11                   Dated at Des Moines, Iowa, this 16th day of July,  
12 2014.

13

14

15                                   /s/ Kelli M. Mulcahy  
16                                   Kelli M. Mulcahy, CSR No. 941, RMR, CRR  
                                  Federal Official Court Reporter

17

18

19

20

21

22

23

24

25